

Philosophy Ripped From The Headlines!



Issue #1, September 2017
Compiled & Edited by *Philosophy Without Borders*

TABLE OF CONTENTS

1. Borders and Immigration.

“Prosecutors’ Dilemma: Will Conviction Lead to ‘Life Sentence of Deportation’?”

- **ARTICLE (p. 3)**
- **FIVE follow-ups and TWO links (p. 9)**

2. Crime and Punishment.

“The Practical Case for Parole for Violent Offenders”

- **ARTICLE (p. 10)**
- **FIVE follow-ups and TWO links (p. 12)**

3. Cultural Conflict.

“How to Make Fun of Nazis”

- **ARTICLE (p. 14)**
- **FIVE follow-ups and TWO links (p. 17)**

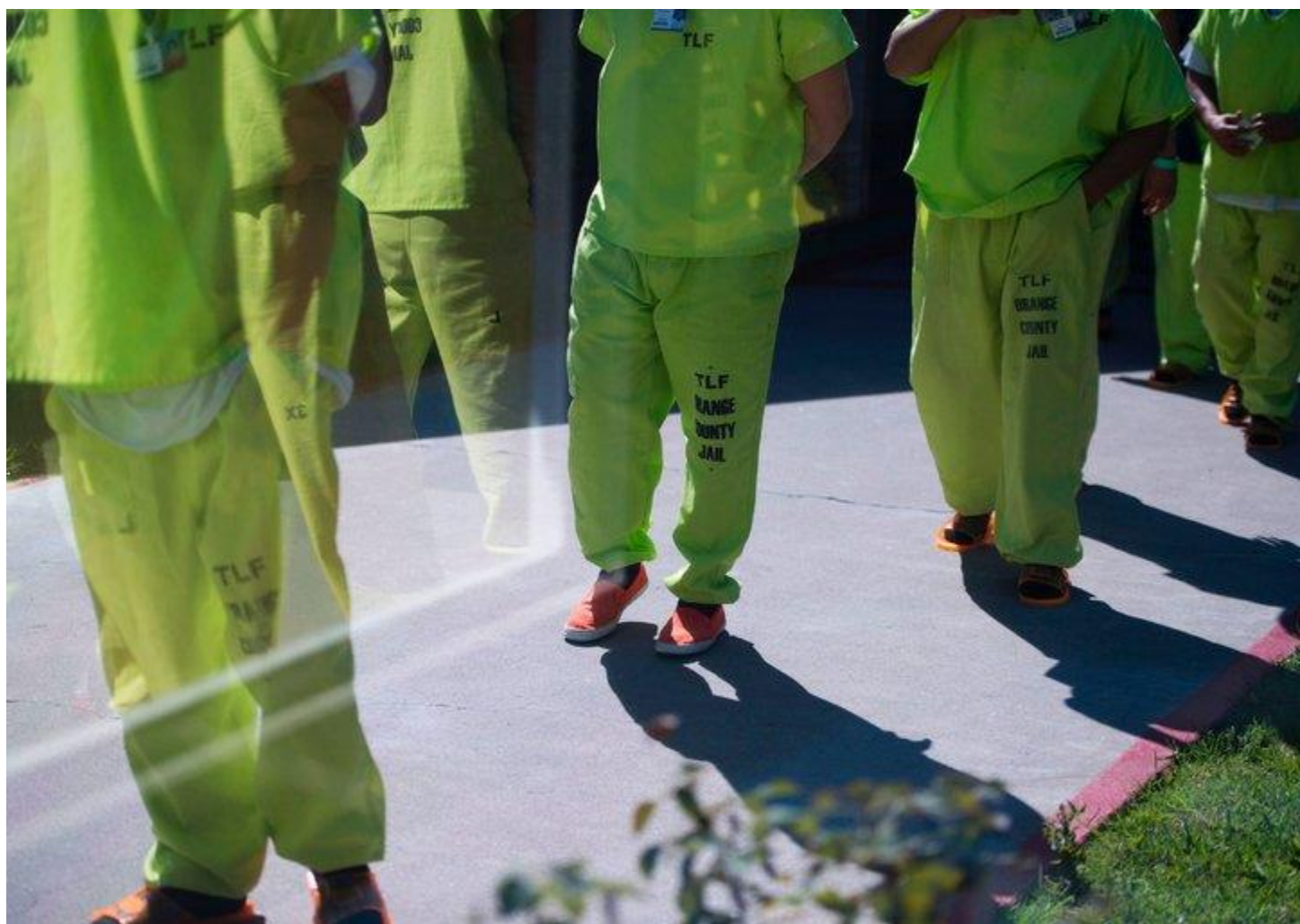
1. Borders, Immigration, and Refugees.

“Prosecutors’ Dilemma: Will Conviction Lead to ‘Life Sentence of Deportation’?”

By [VIVIAN YEE](#)

The New York Times 31 JULY 2017

URL = <https://www.nytimes.com/2017/07/31/us/prosecutors-dilemma-will-conviction-lead-to-life-sentence-of-deportation.html?emc=eta1>



Immigration detainees at the Theo Lacy Facility in Orange, Calif., in March. California law now requires immigration consequences to be factored into criminal cases. Credit Robyn Beck/Agence France-Presse — Getty Images

The drunken-driving case seemed straightforward, the kind that prosecutors in Seattle convert into a quick guilty plea hundreds of times a year: a swerving car, a blood-alcohol level more than twice the legal limit, a first-time offense that caused no injuries.

The only complication was the driver. A 23-year-old undocumented immigrant studying at the University of Washington, she had gained some assurance against deportation through a [federal program](#) for people who had entered the country illegally as children. If she pleaded guilty to driving under the influence, the punishment any Washington resident might face could be compounded by a more permanent penalty. She could lose her protected status; she could be deported.

Which, for the prosecutor, presented a difficulty: Was this what justice should look like?

Now that President Trump's hard line has made deportation a [keener threat](#), a growing number of district attorneys are coming to the same reckoning, concluding that prosecutors should consider potential repercussions for immigrants before closing a plea deal. At the same time, cities and states are reshaping how the criminal justice system treats immigrants, hoping to hopscotch around any unintended immigration pitfalls.

These shifts may inaugurate yet another local-versus-federal conflict with the Trump administration, which is already [tussling](#) with many liberal cities over other protections for immigrants.

For prosecutors, such policies are also stretching, if not bursting, the bounds of the profession. Justice is supposed to be blind to the identity of a defendant. But, the argument goes, the stakes might warrant a peek.

“There's certainly a line of argument that says, ‘Nope, we're not going to consider all your individual circumstances, we want to treat everybody the same,’” said Dan Satterberg, the prosecuting attorney for Seattle and a longtime Republican, who instituted an immigration-consequences policy last year and strengthened it after the presidential election. “But more and more, my eyes are open that treating people the same means that there isn't a life sentence of deportation that might accompany that conviction.”

With that in mind, his office allowed the student to plead guilty to reckless driving instead of driving under the influence. The deal, which included three days of community service and two years of probation — milder than the standard driving-under-the-influence penalty of 24 hours in jail, a few days' community service and five years' probation — did not jeopardize her protected status.

But many prosecutors remain wary, hesitant to meddle in what they regard as the federal government's business and even more reluctant to depart from what they say is a bedrock principle of the system.

“There’s probably hundreds if not thousands of issues that I suppose we could take into consideration,” said Brian McIntyre, the county attorney in Cochise County, Ariz., “and when we do that, we necessarily wind up not being as fair to someone else.”

Cochise prosecutors are not supposed to consider the collateral effects of a conviction, whether it be to a child custody case or a military career.

If he made accommodations for an immigrant, Mr. McIntyre said, he felt that he would also owe a citizen in similar circumstances the same option, “because is he not being, essentially, negatively impacted by his U.S. citizenry?”

A criminal record often has different stakes for an immigrant than it does for a citizen. It can mean losing a green card or being barred from citizenship. Those who lack legal status can lose any chance to gain it. Those with legal status, as well as those without, can face automatic deportation.

In many cases, the city-and-state-level changes dovetail with broader [criminal justice reforms](#) that were already underway before Mr. Trump took office.

But to the administration, policies that help noncitizens duck immigration penalties are tantamount to an assault on the rule of law.

“It troubles me that we’ve seen district attorneys openly brag about not charging cases appropriately under the laws of our country,” Attorney General Jeff Sessions said in April.

The local efforts to help immigrants may not always work. The Trump administration has made clear that anyone without legal status [may be deported](#), regardless of whether they have been convicted of a crime.

But reducing criminal penalties can help immigrants by keeping them out of jail, which can make it more difficult for [Immigration and Customs Enforcement](#) to find them, or by preserving their options in immigration court.

In May, Denver [stopped imposing](#) a maximum jail sentence of 365 days for some lower-level crimes, like shoplifting. A conviction with a potential sentence of a year or longer — even if the actual sentence is far shorter — can disqualify noncitizens from most forms of legal status or render them deportable.



Dan Satterberg, the prosecuting attorney in King County, Wash., in Seattle in March. He strengthened an immigration-consequences policy after the presidential election. Credit Elaine Thompson/Associated Press

“Whether you committed a physical assault on someone or were caught urinating in the park, you were subject to the same maximum penalties, which doesn’t make sense,” the mayor, Michael B. Hancock, said in an interview.

The Denver shift builds on state laws in California and Washington State that cap misdemeanor penalties at 364 days. That ceiling applies retroactively in California, a major benefit for people detained by the immigration authorities over old convictions.

Immigration lawyers say they frequently see immigrants stripped of green cards or visas over convictions for lower-level crimes, exposing them to deportation.

“Not only do you do your time and pay your fine under criminal court,” said Jeannette Zanipatin, a lawyer at the [Mexican American Legal Defense and Educational Fund](#), “but you’re literally banished from your family and everyone you know.”

In some states, interventions have come from as high up as the governor’s mansion. In recent months, Democratic governors in Colorado, Virginia and New York have tried to help immigrants facing deportation by pardoning their old crimes, though the results have been

mixed. One was [released](#) after a pardon, but another has been [deported](#) and a [third](#) remains detained.

Prosecutors who take immigration status into account say this consideration will not be extended to serious or violent crimes. They argue that showing flexibility in nonviolent, minor cases will help build trust with immigrants in their communities, making them [more likely](#) to report crimes and serve as witnesses.

The acting Brooklyn district attorney, Eric Gonzalez, went further than most in April, when he [announced](#) that his prosecutors would begin notifying defense lawyers about the potential immigration fallout of their clients' cases and that he would hire two in-house immigration lawyers to consult on prosecutions.

Days later, the state's attorney for Baltimore, Marilyn J. Mosby, said she had told her staff members to [use their discretion](#) when it came to cases with an immigration factor, considering defendants' prior records and community ties.

"There's no set standard," she said. "You have to base it on everything that's in front of you."



The state's attorney for Baltimore, Marilyn J. Mosby, in her office this month. She said she told her staff members to use their discretion in cases that have an immigration factor. Credit Gabriella Demczuk for The New York Times

It is not yet clear what that will look like in Baltimore or Brooklyn. But in Santa Clara County, Calif., whose district attorney was among the first to outline an official policy, prosecutors often allow a noncitizen to plead guilty to a lesser charge in exchange for more jail time or probation.

“If we're giving something, we're going to get something,” said the district attorney, Jeff Rosen.

California law now [requires](#) immigration consequences to be factored into criminal cases. The state has also passed a law allowing people to [erase or revise](#) old convictions if they successfully argue that they were not advised at the time that a guilty or no-contest plea would endanger their immigration status.

Occasionally, cases involving noncitizens have boomeranged on local officials. In April, Mr. Rosen's office was plunged into a [controversy](#) surrounding a domestic-violence case in which a green-card holder from India was charged with felony domestic violence against his wife, a citizen, but ultimately pleaded guilty to lesser charges. The woman has criticized the plea deal as too lenient.

Although prosecutors considered the potential loss of the man's green card in negotiations, Mr. Rosen said, they felt there was not enough evidence to prove the initial charges in court.

In Boston, a suspect in the double murder of two physicians in May, a legal resident from Guinea-Bissau, had been able to [keep his green card](#) despite robbing two banks in recent years after his lawyer negotiated a plea deal that allowed him to plead to larceny instead of unarmed bank robbery. The sentence he received from a judge was also one day short of the 365-day threshold that could have led to his deportation.

But backlash has been infrequent, and prosecutors have continued to take immigrants' status into account.

Luke Larson, the deputy prosecutor on the case of the Washington State student charged with drunken driving, said several factors favored a milder charge, including her strong academic record and lack of a criminal history.

Most unsettling, for him, was that she had not been back to her home country since she was a toddler. She got the deal.

“It's easier to say, ‘I don't want to know about the potential immigration consequences, and I don't care,’” said his boss, Mr. Satterberg. “It's harder when you want to know. Then it does require you to know more and to be more creative and to take more of a risk with the case.”

FIVE Follow-Ups:

1. Leaving aside legal issues for a moment, what is the *political* distinction between (i) a citizen, (ii) a non-citizen immigrant, and (iii) an illegal immigrant? Is this rationally justified?
2. Leaving aside legal and political issues for a moment, what is the *moral* distinction between (i) a citizen, (ii) a non-citizen immigrant, and (iii) an illegal immigrant? Is this rationally justified?
3. Bringing legal issues back in, are laws that discriminate between (i) citizens, (ii) non-citizen legal immigrants, and (iii) illegal immigrants, *such that those who belong to group (ii) or group (iii) and are deemed to have committed **minor** crimes, can be deported*, rationally justified?
4. Correspondingly, are laws that discriminate between (i) citizens, (ii) non-citizen legal immigrants, and (iii) illegal immigrants, *such that those who belong to group (ii) or group (iii) and are deemed to have committed **serious** crimes, can be deported*, rationally justified?
5. What are the general legal, moral, and political rationales for limited immigration and open immigration? Are they rationally justified?

TWO Links:

1. “Immigration,” *Stanford Encyclopedia of Philosophy*, URL = <https://plato.stanford.edu/entries/immigration/>
2. “Immigration: The Case for Limits,” and “The Case for Open Immigration,” both in *Contemporary Debates in Applied Ethics*, pp. 191-220, URL = <http://14.139.206.50:8080/jspui/bitstream/1/1750/1/Contemporary%20Debates%20in%20Applied%20Ethics.pdf>

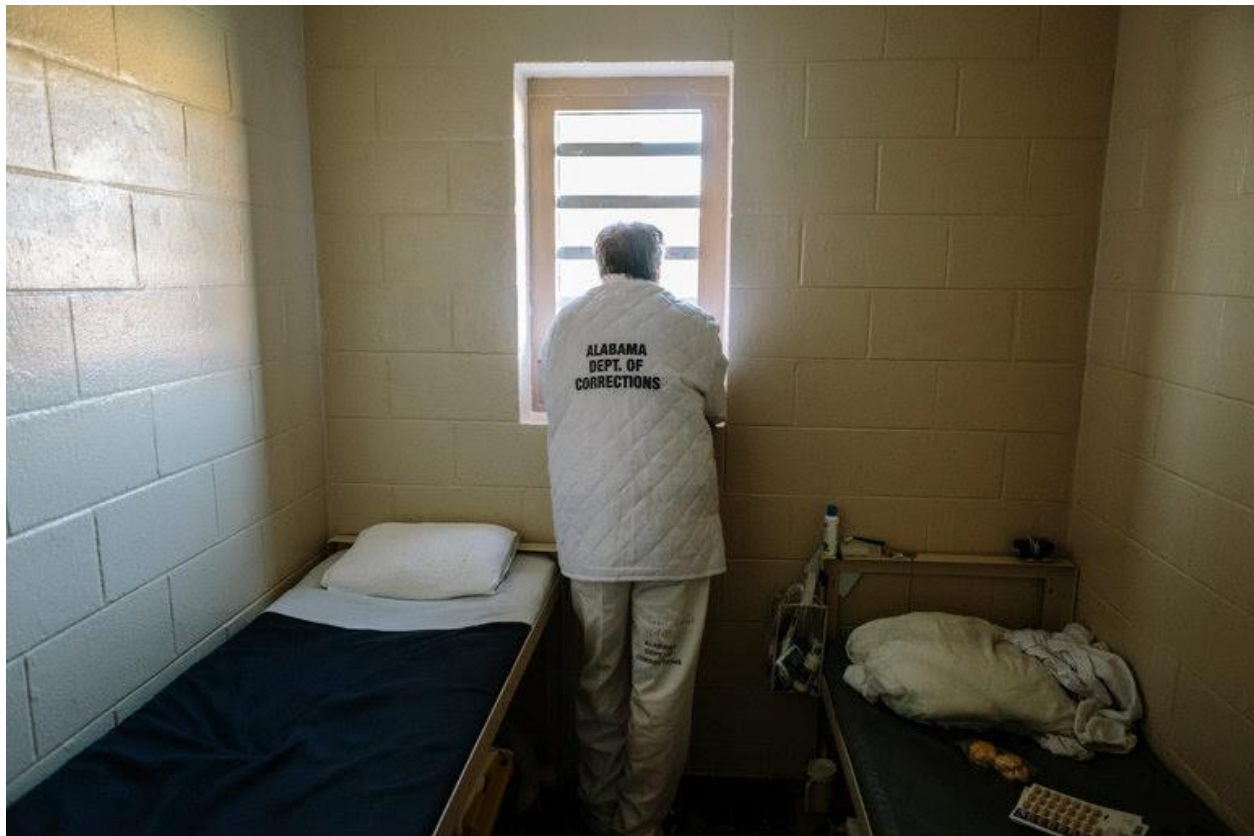
2. Crime and Punishment.

“The Practical Case for Parole for Violent Offenders”

By MARC MORJÉ HOWARD

The New York Times 8 AUGUST 2017

URL = <https://www.nytimes.com/2017/08/08/opinion/violent-offender-parole-sentencing-reform.html?emc=eta1>



An inmate at St. Clair Correctional Facility in Alabama. Credit William Widmer for The New York Times

The American criminal justice system is exceptional, in the worst way possible: It combines exceptionally coercive plea bargaining, exceptionally long sentences, exceptionally brutal prison conditions and exceptionally difficult obstacles to societal re-entry.

This punitiveness makes us stand out as uniquely inhumane in comparison with other industrialized countries. To remedy this, along with other changes, we must consider opening the exit doors — and not just for the “easy” cases of nonviolent drug offenders. Yes, I’m suggesting that we release some of the people who once committed serious, violent crimes.

There's widespread agreement that current practices are unsustainable. The United States is home to 5 percent of the world's population, yet has 25 percent of the world's prisoners. The grim reality of American justice is that there are 2.3 million people behind bars, five million on parole or probation, 20 million with felony convictions and over 70 million with a criminal record.

That's why sentencing reform — mainly consisting of reduced penalties for drug-related crimes — has received bipartisan support at both the federal and state levels. But this isn't enough. We should also bring back discretionary parole — release before a sentence is completed — even for people convicted of violent crimes if they've demonstrated progress during their imprisonment.

Other democracies regularly allow such prisoners to be granted reduced sentences or conditional release. But in the United States the conversation about this common-sense policy became politicized decades ago. As a result, discretionary parole has largely disappeared in most states and was eliminated in the federal system. Prisoners whose sentences include a range of years — such as 15 to 25 years, or 25 years to life — can apply to their state's parole board for discretionary parole, but they almost always face repeated denials and are sent back to wither away behind bars despite evidence of rehabilitation. (Inmates who have served their maximum sentence are released on what is called mandatory parole.)

Rejection is usually based on the “nature of the crime,” rather than an evaluation of a person's transformation and accomplishments since they committed it. The deeper reason for the rejection of discretionary parole requests is simple: fear. Politicians and parole board members are terrified that a parolee will commit a new crime that attracts negative media attention.

But this fear-driven thinking is irrational, counterproductive and inhumane. It bears no connection to solid research on how criminals usually “age out” of crime, especially if they have had educational and vocational opportunities while incarcerated. It permanently excludes people who would be eager to contribute to society as law-abiding citizens, while taxpayers spend over \$30,000 a year to house each prisoner. And it deprives hundreds of thousands of people of a meaningful chance to earn their freedom.

But are prisoners who have served long sentences for violent crimes genuinely capable of reforming and not reoffending? The evidence says yes. In fact, only about 1 percent of people convicted of homicide are arrested for homicide again after their release. Moreover, a recent “natural experiment” in Maryland is very telling. In 2012, the state's highest court decided that Maryland juries in the 1970s had been given faulty instructions. Some defendants were retried, but many others accepted plea bargains for time served and were released. As a result, about 150 people who had been deemed the “worst of the worst” have been let out of prison — and none has committed a new crime or even violated parole.

This outcome may sound surprising, but having spent one afternoon a week for the past three years teaching in a maximum-security prison in Maryland, I'm not shocked at all. Many of the men I teach would succeed on the outside if given the chance. They openly recognize their past mistakes, deeply regret them and work every day to grow, learn and make amends. Many of them are serving life sentences with a theoretical chance of parole, but despite submitting thick

dossiers of their accomplishments in prison along with letters of support from their supervisors and professors, they are routinely turned down.

Over the past several years, I have brought in hundreds of Georgetown students for tours that include a meeting with a panel of prisoners, and I have accompanied nearly 50 academic colleagues who have delivered lectures to my incarcerated students. Without fail, the things that stand out to visitors are the same things that haunt me: the compassion, engagement and intellect of people who made terrible mistakes long ago but should not be perpetually defined by the worst thing they've ever done.

Until recently the political situation was favorable to bipartisan criminal justice reform. But the election of a self-described "law and order candidate," the doubling of the stock prices of private-prison companies and the return of the discredited war on drugs gives an indication of the direction of the current administration.

But whenever a real discussion about reform does come, policy makers should look beyond the boundaries of the United States. To be clear, I am not suggesting that all long-term prisoners should be released nor that the perspectives of crime victims should be ignored. Serious crimes warrant long sentences. But other democracies provide better models for running criminal justice and prison systems. Perhaps we could learn from them and acquire a new mind-set — one that treats prisons as sites to temporarily separate people from society while creating opportunities for personal growth, renewal and eventual re-entry of those who are ready for it.

FIVE Follow-Ups:

1. Should criminals be legally punished? If not, how should they be treated, and why? If so, what rationally justifies legal punishment?
2. Assuming that at least some criminals should be legally punished by imprisonment, what rationally justifies differential sentencing?
3. Assuming that at least some criminals should be legally punished by imprisonment, and also assuming that differential sentencing is rationally justified, then what rationally justifies parole?
4. Assuming that at least some criminals should be legally punished by imprisonment, that differential sentencing is rationally justified, and that parole is also rationally justified, then what rationally justifies parole for some but not for others?

5. Is the following a sound argument? If so, why; or if not, why not?

(i) “People who made terrible mistakes long ago ... should not be perpetually defined by the worst thing they’ve ever done.”

(ii) “ The deeper reason for the rejection of discretionary parole requests is simple: fear. Politicians and parole board members are terrified that a parolee will commit a new crime that attracts negative media attention.”

(iii) “[A]re prisoners who have served long sentences for violent crimes genuinely capable of reforming and not reoffending? The evidence says yes. In fact, only about 1 percent of people convicted of homicide are arrested for homicide again after their release.”

(iv) Therefore, “we [should] release some of the people who once committed serious, violent crimes”?

TWO Links:

1. “Legal Punishment,” *Stanford Encyclopedia of Philosophy*, URL = <https://plato.stanford.edu/entries/legal-punishment/>.

2. “Power and Punishment: Two New Books About Race and Crime,” *The New York Times*, URL = https://www.nytimes.com/2017/04/14/books/review/locking-up-our-own-james-forman-jr-colony-in-nation-chris-hayes.html?emc=eta1&_r=0

3. *Cultural Conflict.*

“How to Make Fun of Nazis”

By MOISES VELASQUEZ-MANOFF

The New York Times 17 AUGUST 2017

URL = https://www.nytimes.com/2017/08/17/opinion/how-to-make-fun-of-nazis.html?emc=eta1&_r=0



Counter-protesters at a K.K.K. rally in Charlotte, N.C., in 2012. Credit Yash Mori

For decades, Wunsiedel, a German town near the Czech border, has struggled with a parade of unwanted visitors. It was the original burial place of one of Adolf Hitler’s deputies, a man named Rudolf Hess. And every year, to residents’ chagrin, neo-Nazis marched to his grave site. The town had staged counterdemonstrations to dissuade these pilgrims. In 2011 it had exhumed

Hess's body and even removed his grave stone. But undeterred, the neo-Nazis returned. So in 2014, the town tried a different tactic: [humorous subversion](#).

The campaign, called Rechts Gegen Rechts — the Right Against the Right — turned the march into Germany's "most involuntary walkathon." For every meter the neo-Nazis marched, local residents and businesses pledged to donate 10 euros (then equivalent to about \$12.50) to a program that helps people leave right-wing extremist groups, called [EXIT Deutschland](#).

They turned the march into a mock sporting event. Someone stenciled onto the street "start," a halfway mark and a finish line, as if it were a race. Colorful signs with silly slogans festooned the route. "If only the Führer knew!" read one. "Mein Mampf!" (my munch) read another that hung over a table of bananas. A sign at the end of the route thanked the marchers for their contribution to the anti-Nazi cause — €10,000 (close to \$12,000). And someone showered the marchers with [rainbow confetti](#) at the finish line.

The approach has spread to several other German towns and one in Sweden (where it was billed as Nazis Against Nazis).

This week, following the violence in Charlottesville, Va., Wunsiedel has come back into the news. Experts in nonviolent protest say it could serve as a model for Americans alarmed by the resurgent white supremacist movement who are looking for an effective way to respond (and who might otherwise be tempted to meet violence with violence). Those I spoke with appreciated the sentiment of the [antifa, or anti-fascist, demonstrators](#) who showed up in Charlottesville, members of an anti-racist group with militant and anarchist roots who are willing to fight people they consider fascists. "I would want to punch a Nazi in the nose, too," Maria Stephan, a program director at the United States Institute of Peace, told me. "But there's a difference between a therapeutic and strategic response."

The problem, she said, is that violence is simply bad strategy.

Violence directed at white nationalists only fuels their narrative of victimhood — of a hounded, soon-to-be-minority who can't exercise their rights to free speech without getting pummeled. It also probably helps them recruit. And more broadly, if violence against minorities is what you find repugnant in neo-Nazi rhetoric, then "you are using the very force you're trying to overcome," Michael Nagler, the founder of the Peace and Conflict Studies program at the University of California, Berkeley, told me.

Most important perhaps, violence is just not as effective as nonviolence. In their 2011 book, "Why Civil Resistance Works," Dr. Stephan and Erica Chenoweth examined how struggles are won. They found that in over 320 conflicts between 1900 and 2006, nonviolent resistance was more than twice as effective as violent resistance in achieving change. And nonviolent struggles were resolved much sooner than violent ones.

The main reason, Dr. Stephan explained to me, was that nonviolent struggles attracted more allies more quickly. Violent struggles, on the other hand, often repelled people and dragged on for years.

Their findings highlight what we probably already intuit about protest: It's a performance not just for the people you may be protesting against but also for everyone else who may be persuaded to join your side.

Take the American civil rights movement. Part of what moved the country toward the Civil Rights Act of 1964 were the images, broadcast to the entire country, of steadfastly nonviolent protesters, including women and occasionally children, being beaten, hosed and abused by white policemen and mobs.

Those images also highlight two points emphasized by Stephanie Van Hook, the executive director of the Metta Center for Nonviolence. First, nonviolence is a discipline, and as with any discipline, you need to practice to master it. Nonviolence training was a fixture of the movement. Even the Rev. Dr. Martin Luther King Jr. and his companions rehearsed in basements, role playing and insulting one another to prepare for what was to come.

And second, sometimes being on the receiving end of violence is the whole point. That's how you expose the hypocrisy and rot you're struggling against. They attack unprovoked. You don't counterattack. You're hurt. The world sees. Hearts change. It takes tremendous courage: Your body ends up being the canvas that bears the evidence of the violence you're fighting against.

But ideally, of course, we'd avoid violence altogether. This is where the sort of planning on display at Wunsiedel is key. Humor is a particularly powerful tool — to avoid escalation, to highlight the absurdity of absurd positions and to deflate the puffery that, to the weak-minded at any rate, might resemble heroic purpose.

Germany is not America. For one, neo-Nazis aren't allowed to carry assault rifles through the streets there, let alone display swastikas. But we do have similar examples of humor being used to counteract fascists in the United States. In 2012, a "white power" march in Charlotte, N.C., was met with counterprotesters dressed as clowns. They held signs reading "wife power" and threw "white flour" into the air.

"The message from us is, 'You look silly,' " a coordinator told the local news channel. "We're [dressed like clowns](#), and you're the ones that look funny."

By undercutting the gravitas white supremacists are trying to accrue, humorous counterprotests may blunt the events' usefulness for recruitment. Brawling with bandanna-clad antifas may seem romantic to some disaffected young men, but being mocked by clowns? Probably not so much.

Which brings us to Charlottesville, and the far right rallies that will surely follow. To those wondering how to respond, Dr. Stephan says that "nonviolent movements succeed because they invite mass participation." Humor can do that; violence less so.

The broader issue, in her view, is this: Why do oppressive regimes and movements invest so much in fomenting violence? (Think of our president and his talent for dividing the country and generating chaos.) Because violence and discord help their cause. So why would you, she asks, "do what the oppressor wants you to do?"

FIVE Follow-Ups:

1. It's a moral commonplace that Nazism is exceptionally evil. But what precisely is it about Nazism *that makes it* so evil?
2. Are there any conceptual, moral, or political differences between (i) *Nazism* (ii) *fascism*, and (iii) *white supremacist racism*? If so, then what are they?
3. Is it ever morally acceptable or even morally obligatory to use violence? If not, then why not? But if so, then what is the difference between (i) morally *acceptable* or even *obligatory* violence and (ii) morally *unacceptable* or *impermissible* violence?
4. Are violent individual or collective resistance to evil, or violent individual or collective protest against evil, ever morally acceptable or even morally obligatory? If so, why; or if not, why not?
5. There seems to be a significant conceptual, moral, or political difference between (i) *mere political humor* and (ii) *nonviolent individual or collective resistance or protest against evil using humor*. If so, what is it? Correspondingly, there also seems to be a significant conceptual, moral, or political difference between (ii) *nonviolent individual or collective resistance or protest against evil using humor* and (iii) *nonviolent individual or collective resistance or protest against evil that doesn't use humor*. If there really is a significant difference between (i) and (ii), does nonviolent individual or collective resistance or protest against evil using humor risk *trivialization* by becoming mere political humor? And if so, then should all nonviolent individual or collective resistance or protest against evil be of type (iii)?

TWO Links:

1. “The King Philosophy,” *The King Center*, URL = <http://www.thekingcenter.org/king-philosophy>

2. “Humor as a Serious Strategy of Nonviolent Resistance to Oppression,” *Peace and Change*, URL = <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0130.2008.00488.x/full>
